United Nations A/C.3/63/SR.24

General Assembly
Sixty-third session
Official Records

Distr.: General
27 January 2009
English
Original: French

Third Committee

Summary record of the 24th meeting
Held at Headquarters, New York, on Friday, 24 October 2008, at 10 a.m.

Chairman: Mr. Majoor ..... (Netherlands)
Ms. Seanedzu (Vice-Chairman) ..... (Ghana)
Mr. Majoor ..... (Netherlands)

Contents

Agenda item 64: Promotion and protection of human rights

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

08-56705 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 64: Promotion and protection of human rights

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (A/63/271 and A/63/288)

1. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) introduced her 2008 thematic report on indicators on violence against women and State response (A/HRC/7/6). The report had been prepared pursuant to Commission on Human Rights resolution 2004/46, which had been supported by the General Assembly in its resolution 61/143.

2. Indicators were a crucial tool to provide guidance on policies and programmes, enable measurement of and monitor progress, in addition to guiding systematic data collection. There was a dearth of reliable data on human rights violations against women and girls. Much work had recently been undertaken by United Nations agencies, Governments and civil society to develop indicators that addressed all forms of violence against women.

3. She proposed three types of indicators for measuring violence against women, namely, "grave violence", "femicide" (murder of women) and "social tolerance" indicators. The indicators on State response to violence against women consisted of, on the one hand, institutional indicators relating to the legal and policy framework, and on the other hand, process indicators pertaining to victims' access to justice and protection. She called for the adoption of reliable, internationally comparable and context-specific indicators.

4. In 2007, she had undertaken official visits to Algeria, Ghana and the Democratic Republic of the Congo. The findings of those visits were included in the mission reports she had presented to the Human Rights Council in March 2008. She would report to the Council in June 2009 on the missions she had conducted to Saudi Arabia, Tajikistan and Moldova. At the invitation of the Government of the Kyrgyz Republic, she would undertake a mission to that country, her last as Special Rapporteur, in April 2009.

5. In 2008, she had participated in three regional consultations with non-governmental organizations in Russia, the Asia-Pacific region and India. The Asia-Pacific consultation had explored the intersection of indigenous women's experience as women and as members of a marginalized group. The interest of such consultations lay in the fact that they highlighted regional and national specificities and fostered engagement between civil society and the Special Procedures of the Human Rights Council. Her next thematic report would focus on the political economy of women's rights.

6. Taking stock of the main achievements of 15 years of work on the mandate of violence against women, she noted that it had become an institutional mechanism for regular in-depth reporting on violence against women globally. The mandate had also contributed to an increased dissemination of international human rights standards pertaining to women's fundamental rights, and it had made clear that all forms of violence against women constituted violations of those rights. She underlined that States had the duty to exercise due diligence in order to prevent such violations, prosecute their perpetrators and offer protection to victims. With standards on violence against women in place, the mandate had turned to their operationalization and monitoring at the national level.

7. Furthermore, the mandate had contributed to greater clarity on the root causes and consequences of violence against women, and underscored that such violence could not be understood in isolation from gender-based discrimination and that it must be addressed as part of the broader effort to ensure gender equality and women's empowerment.

8. On the occasion of the sixtieth anniversary of the Universal Declaration of Human Rights, it was important to recall that violence against women persisted in every country and constituted a major impediment to achieving gender equality. As new and complex issues in that area continued to emerge, there would be a need to refine legal and policy responses and to develop creative institutional and financial support. The mandate should also receive sustainable funding that would make it possible to implement recommendations made following official country visits.

9. **Ms. Sapag** (Chile) paid tribute to the Special Rapporteur for her highly informative reports and her work within the Commission on the Status of Women, particularly in respect of women's access to financial resources and the situation of women in armed conflict and post-conflict situations. She would be interested to know the Special Rapporteur's opinion on the recent adoption of Security Council resolution 1820 (2008) which contained many initiatives to promote women's participation in peace processes and peacekeeping operations. She also asked whether the Special Rapporteur had access to statistics on the murder of women (femicide) worldwide.

10. **Mr. Gonnet** (France), speaking on behalf of the European Union, asked how Member States might collaborate to draw up indicators that complied with Specific, Measurable, Attainable, Relevant and Time-bound (SMART) norms. He also wondered how the issue of violence against women might be prioritized in health policies as suggested by the Special Rapporteur.

11. **Mr. Ramadan** (Lebanon) asked the Special Rapporteur whether she considered poverty as a form — or, at least, a root cause — of violence against women.

12. **Ms. Wade** (Canada) said that her country followed with great interest the Special Rapporteur's efforts to elaborate international indicators to assess progress in eliminating violence against women. As the mandate of the Special Rapporteur drew to an end, she wondered what priority areas needed more sustained international attention.

13. **Mr. Bonamigo** (Brazil) said that his country was committed to promoting gender equality and the empowerment of women and welcomed its mention in the report. He wished to know how countries might best contribute to the Special Rapporteur's next thematic report.

14. **Ms. Rothville** (New Zealand) said that the thematic report would help intensify efforts to combat violence against women, an issue which her country considered to be of great importance. Since the Special Rapporteur had referred to the protection of women at risk, she would be grateful for her opinion on the specific situation of women with disabilities.

15. **Ms. Cross** (United Kingdom) said that her country condemned all forms of violence against women and strongly supported all initiatives to combat them. She welcomed the launching of the Secretary-General's campaign to end violence against women and the adoption of Security Council resolution 1820 (2008), which related to sexual violence in armed conflict. Violence and the lack of security prevented women and girls from participating fully in health, education and other services and increased the risks of maternal mortality and vulnerability to HIV/AIDS. It should also be noted that violence against women was not restricted to countries in conflict or post-conflict situations, but was present in all countries. The establishment of a new United Nations database on violence against women could make a significant contribution. She wondered whether the Special Rapporteur envisaged any measures that might enhance the coherence and effectiveness of the response of the United Nations system to violence against women.

16. **Ms. Stirø** (Norway) said that her country supported the appeal for financing research capable of changing mindsets and halting the upsurge in violence against women. For it to be effective, communication of information on violence against women should be regulated according to international norms agreed by a wide range of stakeholders. Moreover, perpetrators of violence against women must play an active part in the solution to the problem of violence. There should accordingly be more of a focus on men, involving both individuals and organizations in measures to combat violence against women.

17. **Ms. Mballa Eyenga** (Cameroon) said that violence against women was a global phenomenon that spared no continent, country or region. Her delegation agreed with the Special Rapporteur that the main challenge of States was to promote gender equality, but believed that it was also necessary to promote the empowerment of women, since poverty constituted the first form of violence against women. Women, lastly, were not mere abstractions, but flesh-and-blood human beings. She therefore wished to hear the Special Rapporteur's views regarding the impact on them of their environment.

18. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that she welcomed the adoption of Security Council resolution 1820 (2008) since women were subject to many forms of violence in armed conflicts. Such violence must not, however, be considered in isolation from that suffered by women in peacetime, and the root causes of women's vulnerability must be analysed in

all cases. Moreover, in post-conflict situations, special attention must be paid to the situation of female human rights activists, including those defending other women at risk, since they were often targets of violent acts. There was thus an urgent need to establish a mechanism for their protection. The international community took far too long to respond to such very serious situations. It was to be hoped also that during implementation of resolution 1820 (2008), special attention would be given to the problem of impunity, since unless that phenomenon was eradicated, harassment of human rights defenders would continue.

19. Data on femicide was the easiest to collect. However, homicide data should be disaggregated by sex to enable identification of the sex of the victims and the perpetrators of those acts and to provide reliable and relevant data. Her main concern was that the data and indicators on violence against women should not be based on purely technical considerations. In addition, in order to carry out its functions, the Statistical Commission must be equipped with the necessary expertise on the issue of violence against women. Her report included an addendum on indicators, which provided an in-depth account of research carried out in that field.

20. Poverty was clearly a major obstacle to eliminating violence against women. Unless women had economic independence, they would continue to be trapped in situations that prevented them from enjoying their full range of rights, including civil, political and economic rights. Therefore, though not a form of violence under the terms of the United Nations Declaration on the Elimination of Violence against Women, poverty represented a key factor that perpetuated women's vulnerability and their exposure to many forms of violence.

21. Progress had been achieved, and standards were now in place. However, violence persisted both in peacetime and wartime. Her predecessor had focused on standard setting, while her own focus had been to operationalize those standards and to define obstacles to progress in that domain. She had also sought to define what it meant for civil society and States to be diligent in fighting violence against women.

22. Some institutional arrangements needed improving within the United Nations system so that the Organization might work more effectively to eliminate violence against women. Thus, instead of a fragmented approach, responses must be harmonized. The Special Rapporteur on violence against women, its causes and consequences should also be closely involved in the work of the Commission on the Status of Women, which was the primary intergovernmental forum for debating women's issues.

23. She was delighted that she had finally been invited to report to the Commission on the Status of Women. She wished to point out that she was not involved in the Secretary-General's campaign on violence against women, but had obtained relevant information and would try to coordinate her own activities with the campaign. It was regrettable that the special procedures, which were very useful, did not benefit from follow-up mechanisms. Like other independent experts, she received limited support from the Office of the High Commissioner on Human Rights. More innovative means must thus be found to strengthen mandates and to ensure sustainable funding sources for the implementation of special rapporteurs' recommendations.

24. She welcomed ideas from Member States on how they might contribute to reports in order to incorporate a focus on national initiatives.

25. Following on from the global studies carried out to date, it would now be possible to address more specific issues such as disabled or older women.

26. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders), introducing her first report to the General Assembly (A/63/288), described her methods of work, which included: communications to Member States on allegations of human rights violations affecting human rights defenders; country visits, which were a means of fact-finding and of monitoring, recognizing and protecting defenders and helped to guide policy decisions; and reporting to the Human Rights Council. In addition, thematic studies explored new areas and shed light on aspects of the work done by defenders and the challenges facing them.

27. According to her vision and priorities for the fulfilment of her mandate, it was essential to conduct a thorough analysis of general trends affecting human rights defenders and the context in which they operated. In particular, there was a need for closer scrutiny of the situation of human rights defenders exposed to specific forms of violation of their rights, especially women defending women's rights and

defenders acting on behalf of economic, social and cultural rights or minority rights. She was particularly interested in initiatives aimed at developing mechanisms for the protection of human rights defenders particularly at risk and was contemplating the establishment of an early warning mechanism so as to counter threats against them.

28. She intended to intensify follow-up by strengthening her collaboration with all human rights defenders at the national, regional and international levels. She was determined to collaborate more closely with the appropriate mechanisms within such regional bodies as the African Commission on Human and Peoples' Rights, the Secretariat of the Inter-American Commission for Human Rights, the Council of Europe and the Organization for Security and Cooperation in Europe, and to contribute to improved cooperation between them, as she had recently done by participating in a meeting on the subject in Brussels. She was also planning to collaborate with other special procedures mandate holders, while continuing to benefit from the work of treaty bodies, which remained a reference for thematic and country reports.

29. She would do more to make better known the rights and obligations set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on Human Rights Defenders, which, 10 years after its adoption, was still not sufficiently known by States or human rights defenders themselves. Activities would therefore be undertaken to disseminate it and, in particular, to make States more aware of their responsibility for its effective implementation and develop the capacity of defenders to secure respect for their rights under the Declaration. Similarly, while the protection function entrusted to her continued to be paramount, better knowledge of good practices in that area would facilitate their adoption and contribute to better implementation of the Declaration. Sharing the relevant good practices was part of her primary mission, which was to make the Declaration better known.

30. The universal periodic review mechanism was of strategic value in improving the situation of human rights defenders in the countries reviewed and had even greater potential because the Declaration was not a binding instrument and did not have a reporting mechanism. She looked forward to engaging in a constructive dialogue with all States with a view to improving the situation of all human rights defenders and drew their attention to the 10 messages annexed to her report, aimed at raising awareness of the action of human rights defenders.

31. **Ms. Seanedzu** (Ghana) asked about the main obstacles encountered in the implementation of the Declaration on Human Rights Defenders and the measures needed to improve the situation. She wished to know whether there were other mechanisms, apart from the universal periodic review, that could be used to improve reporting and what United Nations and regional human rights bodies could do to help better coordinate activities in that area. It would also be useful to know how States could make the best use of the 10 key messages.

32. **Mr. Gonnet** (France), speaking on behalf of the European Union, said that the Special Rapporteur could count on the European Union's full support for her efforts to intensify her collaboration with stakeholders and that, in 2004, it had adopted guidelines aimed at strengthening the role of human rights defenders. He hoped that, on the occasion of the anniversary of the Declaration, States that had not yet acceded to it would do so and activities would be undertaken to make it better known.

33. He would appreciate information about the main obstacles impeding the exercise of freedom of expression and assembly by human rights defenders, ways of ensuring increased protection for the mandate of defenders particularly exposed to attacks and the means whereby the universal periodic review might contribute to improved monitoring of the situation of defenders in countries being reviewed by the Human Rights Council.

34. **Ms. Wade** (Canada) concurred in the idea that special attention should be given to human rights defenders dealing with sensitive issues. She commended the Special Rapporteur for her efforts to analyse the obstacles to the exercise of freedom of association and agreed that the universal periodic review mechanism played a useful role in monitoring the situation of human rights defenders in the countries concerned.

35. **Ms. Halpern** (United States of America) said that human rights defenders were a mainstay of dynamic democracies and played a leading role in reporting abuses; she therefore supported efforts to enhance their

protection. In 2007, her Government had set up a fund to provide financial, legal and medical assistance to defenders subject to repression in some States. She wished to know whether the Special Rapporteur was planning visits in the near future to Cuba and Myanmar, where human rights defenders were regularly persecuted. It would also be useful to know which countries placed the greatest obstacles in the way of human rights defenders and what the Special Rapporteur proposed should be done about States that refused to cooperate.

36. **Ms. Phumas** (Thailand) said that her country had responded to the Special Rapporteur's appeal by disseminating the Declaration on Human Rights Defenders and collaborating with the Office of the United Nations High Commissioner for Human Rights in the forthcoming commemoration of its tenth anniversary. She would welcome further information about what was understood by "human rights defenders".

37. **Mr. Chumarev** (Russian Federation) said that his country intended to study carefully the Special Rapporteur's proposals regarding the protection function of human rights defenders and other United Nations mechanisms. The Human Rights Council had put in place a strict framework for special procedures, particularly for reporting on cooperation with States. He wondered in what document the Special Rapporteur had found a basis for incorporating into her field of activity the question of the rights of sexual minorities and to what extent the defenders of such rights could be regarded as human rights defenders. He also inquired how the Special Rapporteur was planning to improve the protection of other particularly vulnerable groups like children, knowing that paedophilia was a serious threat in many countries.

38. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders), responding to the questions put by the delegations, said that the main problems encountered in implementing the Declaration were the restrictions placed on freedom of association and freedom of expression, the lack of protection offered by police services and, last but not least, the impunity enjoyed by offenders. She gave examples of good practices, such as allowing human rights defenders to appeal against the rejection of their applications for registration, granting them protection or issuing visas to them, deleting clauses relating to sedition in national legislations, allocating direct financial assistance, inviting United Nations mechanisms to undertake country missions, allowing human rights defenders and civil society to participate in the framing of policies and legislation, and efforts to combat impunity.

39. She hoped that the universal periodic review would encourage States to cooperate with human rights defenders. Monitoring measures were the responsibility of Governments and defenders alike and should be taken into account in States' reports. The universal periodic review was a more comprehensive monitoring tool than the treaty body system. In order to foster cooperation among States and between States and the Organization, she proposed to promote exchanges of information and good practices, organize joint country missions and establish a shared database.

40. She noted a resurgence of violations on the occasion of electoral processes and stressed that defenders dealing with sensitive issues were particularly exposed to attacks. In addition, owing to increasing land tenure issues, more and more people were having to move, while the very right to life of human rights defenders was violated and restrictions continued to be placed on access to information and freedom of expression or association.

41. She stressed that the 10 key messages were of great importance for awareness-raising and called on States, particularly their police services and judicial authorities, to refer to them.

42. Freedom of expression was often hampered by restrictive legislation. The universal periodic review should enable human rights defenders to be more fully taken into account by encouraging consultations during the preparation of reports. Many country visits had been proposed and she hoped to engage in a constructive dialogue with States on the subject, in accordance with the Declaration. The Declaration did not provide a definition of defenders but, as had been noted by her predecessor, human rights defenders were identified by what they did.

43. The rights of sexual minorities came within her mandate since the Declaration recognized that all those who were threatened or abused should be protected.

44. *Ms. Seanedzu (Ghana), Vice-Chairman, took the Chair.*

45. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders) said that States

resorted to different means to limit freedom of expression — adopting restrictive laws, withdrawing consent, displacing populations, breaking into homes — especially in the case of defenders working in the area of economic, social and cultural rights or upholding the rights of lesbian, gay, bisexual and transgender people. The situation of human rights defenders would be taken into account in her reports and consultations. She had asked to visit many countries, including Cuba and Myanmar, and was still awaiting a response from those countries.

46. Human rights defenders faced many problems in a number of countries in every region. While States might refuse to collaborate, the Declaration on Human Rights Defenders advocated constructive dialogue and cooperation. The Human Rights Council could incorporate into its universal periodic review mechanism a provision encouraging States to show cooperation.

47. Human rights defenders were defined by their work, which was to encourage respect for human rights. All vulnerable groups subject to harassment would continue to be protected, because everyone had a right to justice, to have their dignity respected.

48. **Ms. Stiro** (Norway) asked how States that did not have a mechanism for submitting such reports could give the Council an account of the situation of human rights defenders and follow up on the universal periodic review. It would also be interesting to know what follow-up there had been to the requests sent to the different Governments.

49. **Ms. Cross** (United Kingdom) said that she endorsed the Special Rapporteur's approach but wondered how she would go about ensuring that human rights defenders could do their work, and avoiding situations like that in Zimbabwe where the Government routinely harassed the defenders and curtailed fundamental freedoms. She also would like to know how she planned to help non-governmental organizations to safeguard human rights and how she would work with Governments to better defend the rights of minorities, indigenous peoples and lesbian, homosexual, bisexual and transgender people.

50. **Ms. Pérez Álvarez** (Cuba) said that it would be wise not to forget the full title of the Declaration. The Special Rapporteur's mandate should therefore cover not only the rights of human rights defenders but also their responsibilities with respect to the constitutions of States and due process rights. Human Rights Council resolution 7/8, paragraph 2 (a), requested the Special Rapporteur to promote the effective and comprehensive implementation of the Declaration. In her view, the Declaration should always be referred to by its full title. Her delegation believed, furthermore, that States, and not a mechanism, had the prime responsibility for protecting human rights. It would appreciate more information on the relations between the Special Rapporteur and others who had been given special procedures mandates, like the Working Group on the Use of Mercenaries.

51. Cuba had information concerning the activities of so-called human rights defenders in its territory and the financing they were receiving from United States organizations. They were in fact mercenaries in the service of a foreign Power, which was seeking to undermine the constitutional order freely chosen by the Cuban people more than 50 years earlier.

52. She believed that the Special Rapporteur's mandate should not be limited to the protection of civil and political rights but should extend also to persons, groups and associations defending economic, social and cultural rights.

53. **Mr. Rothville** (New Zealand) said that it was normal on the occasion of the sixtieth anniversary of the Universal Declaration of Human Rights to pay tribute to all those who had worked to defend those rights. Communication was still a very good way of protecting human rights, and he would like to know what else States could do to support such efforts.

54. **Mr. Zeidan** (Observer for Palestine) said that the Israeli occupation forces and settlers were targeting human rights defenders and journalists. The list of Palestinian and foreign victims of such practices was growing daily. Recently, foreign peace activists who were helping Palestinian militants had been brutally attacked by Israeli settlers, who had wounded and killed a great many people, under the approving gaze of Israeli soldiers. He would like to know what the international community could do to put an end to those acts of aggression, which were violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to protect human rights defenders and see to it that the perpetrators of those attacks were held accountable for their actions.

55. **Mr. Han** (Myanmar) said that while he had refrained from raising a point of order in order not to

interrupt the discussion, he would ask speakers to use the official name of his country. The right of States to choose their own name must be respected.

56. **The Chairman** asked delegations to refer to States by their official names.

57. **Mr. Rezvani** (Islamic Republic of Iran) observed that the first step should be to define the concept of a human rights defender, in order to avoid abuses. In reading the report, it was difficult to distinguish between human rights defenders, non-governmental organizations that defended human rights and human rights activists. The issue of their sources of assistance, often obscure or informal, also had to be clarified, for it could cast doubt on the activities of organizations defending human rights. In her statement, the Special Rapporteur had emphasized economic, social and cultural rights and defenders of the rights of minorities, indigenous peoples and groups such as lesbian, gay, bisexual and transgender people. His delegation did not consider it appropriate to put those different categories of human rights defenders on an equal footing.

58. *Mr. Majoor (Netherlands) resumed the Chair.*

59. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders) said that according to the Declaration, human rights defenders must use peaceful means in the course of their work. She would bear in mind the comments made, as she continued to give some thought to specifying the concept of the human rights defender. She herself would carry out her mandate by engaging in a constructive dialogue for the States. She hoped that all human rights defenders would continue to conduct their activities appropriately and that they would be given the assistance they needed.

60. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers), introducing the fourth report of the Special Rapporteur on the independence of judges and lawyers (A/63/271), said that in the course of his activities to protect the integrity and independence of judges, lawyers and the judiciary, and to ensure due process safeguards, he had visited several countries, including the Democratic Republic of the Congo and the Russian Federation, and was awaiting responses to requests to visit other countries, notably Fiji.

61. Stressing that the right to a fair trial must be respected in all circumstances, he drew attention to the risks of human rights violations and impingements on the judicial independence posed by the declaration of states of emergency and the establishment of parallel justice systems in the name of national security or the struggle against terrorism. He noted the areas of convergence between his report and that of the Special Rapporteur on terrorism and human rights, such as the fundamental role of judicial power in safeguarding human rights and the denial to persons suspected of terrorism of the right to a fair trial. He called for a universal declaration that incorporated the principles governing the protection of human rights during states of emergency with a view to consolidating relevant international standards.

62. He would continue to monitor the question of remuneration of judges and undertook to give special attention to that issue in the future. He touched on the latest developments in the field of international justice and called on States that had not yet done so to accede to the International Convention for the Protection of All Persons from Enforced Disappearance and to recognize the competence of the Committee on Enforced Disappearances. He expressed concern that persons sentenced to death in Iraq continued to be executed and called for the establishment of a panel of high-level experts to investigate the attack on the United Nations headquarters in Baghdad. He noted the lack of cooperation by the Government of the Sudan with the International Criminal Court with respect to war crimes cases, progress made in the Democratic Republic of the Congo, and the fact that individuals accused of crimes against humanity in Uganda continued to be at large.

63. **Mr. Mohamed** (Maldives) said that his country, in accordance with the recommendations made by the Special Rapporteur following his country visit, had revised its Constitution to provide for a Supreme Court, a Judicial Service Commission to oversee the appointment of judges and the creation of the post of Attorney General; all three of those institutions had played key roles in the country's recent first-ever multiparty elections. The new Constitution had also strengthened key fundamental rights such as equal treatment before the law and protection from arbitrary detention. His country had also taken steps to promote the role of women in the judicial and political classes, provide legal aid, stiffen sentences for sexual offenders, adopt a new penal code and drug control

plan, create a national bar association, and train police in human rights norms.

64. **Mr. Vigny** (Switzerland) asked to hear the Special Rapporteur's thought on the question of transitional justice, which the Human Rights Council had asked the Office of the United Nations High Commissioner for Human Rights to study.

65. **Mr. Bonamigo** (Brazil) wished to know whether or not the principle of due process as enshrined in the International Covenant on Civil and Political Rights could be considered to have become a universal principal of international law.

66. **Mr. Banos** (United States of America) said that his country, though it firmly believed that the declaration of a state of emergency should not be allowed to lead to violations of fundamental democratic rights, human rights or judicial independence, was nevertheless of the opinion that existing international instruments already included sufficient protection measures against the abuses covered by the report, and that it was not necessary to adopt a new instrument on states of emergency. The United States of America would also like to know if, in the course of his missions, the Special Rapporteur had encountered particular cases where remuneration problems had affected the independence of judges.

67. **Mr. Limeres** (Argentina) drew attention to his Government's recent decision to further reform its code of military justice to bring it completely into line with international law and prevent the kinds of abuse noted by the Special Rapporteur. He asked the Special Rapporteur if he could provide an update on international developments in human rights law and if he could say whether or not the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance would succeed in putting an end to impunity.

68. **Mr. Al-Hussaini** (Iraq) said that his country was working to put in place new institutions and was counting on cooperation and technical assistance from United Nations agencies.

69. **Mr. Saeed** (Sudan) objected to the references to International Criminal Court cases in the report. The Special Rapporteur's mandate extended only to the question of the independence of judges and lawyers, and the International Criminal Court had been established by the Rome Statute, to which the Sudan was not a Party. He noted that his country had a competent judiciary and that the three criminal courts that had been established in Darfur had already heard a certain number of cases. His country believed that the involvement of the Prosecutor of the International Criminal Court was sabotaging the Darfur peace process and that the Special Rapporteur should not support those who sought to prevent development in the Sudan and to compromise the Sudanese Government's efforts to come to a peaceful resolution with the armed factions in Darfur.

70. **Ms. Basso** (France), speaking on behalf of the European Union, asked what measures might be taken to prevent violations of the principle that judges' salaries may not be reduced.

71. **Mr. Nagan** (Netherlands) wondered if the Special Rapporteur could elaborate further on some of the International Criminal Court's recent cases and on the role of the Court in combating impunity.

72. **Mr. Amorós Núñez** (Cuba) wondered if the Special Rapporteur could elaborate further on the question of the right to due process of persons suspected of terrorism and indicate, bearing in mind information contained in his previous reports, if he had observed situations in the United States of America or in other parts of America that required his attention.

73. **Mr. Navoti** (Fiji) said that his delegation had recommended to his Government that it should agree to the Special Rapporteur's request to conduct a mission there, and asked the Special Rapporteur, who had expressed regret over the cancellation of a visit by the International Bar Association, to specify which other competent organizations Fiji might collaborate with to assist him in carrying out his mandate.

74. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers), said that the statement made by the representative of the Maldives illustrated the constructive relations that could be established between the United Nations and States somewhat outside the mainstream of the international community. The case she had referred to was a valuable one, which reflected the positive impact of country missions. In that connection, he welcomed the invitation to visit Fiji, which he planned to do in November 2008.

75. The representative of Switzerland had asked an extremely important question, given that some forty

countries were in what might be called a transitional situation. Such situations could arise in many different forms. The country in question might or might not have had democratic institutions in the past, it might have emerged from an armed conflict in which State institutions were destroyed, and so on. In any event, the restoration of the judiciary was key. Switzerland's draft resolution was of particular strategic importance, in that it was aimed at directing the United Nations response and mobilizing the necessary resources, in particular for cooperation.

76. He agreed with the representative of Brazil that the principle of respect for the rule of law had a universal dimension.

77. In response to the comments made by the representative of the United States of America, he said that a state of emergency did not imply arbitrary rule; it was subject to a set of standards and principles. It should not be aimed at legitimizing de facto governments or military dictatorships. With regard to judges' salaries, he said that various means, including budgetary resources, were used in order to exert pressure on judges. It was essential that the judiciary should remain independent and should not be subjected to pressure from the other powers, including through their pay.

78. In response to the statement of the representative of Argentina, he said that the issue of codes of military justice called to mind the events that had taken place in Argentina, where such codes had led to serious procedural violations. The International Convention for the Protection of All Persons from Enforced Disappearance had been promoted by Latin American States, which had suffered considerably as a result of the scourge of enforced disappearances. The Convention's preventive and deterrent nature made it especially relevant.

79. He was grateful to the representative of Iraq for being open to cooperation. He hoped to visit that country soon.

80. Responding to the representative of the Sudan, he said that numerous United Nations resolutions made reference to the need to take into consideration the decisions of the International Criminal Court. The aspect of his mandate which had to do with combating impunity had never been questioned. He also reminded the Sudanese Government that in his statement, he had expressed the hope that the Sudanese authorities would take action to prosecute crimes committed in Darfur.

81. Responding to the representative of Cuba, he said that the report on the situation of detainees at Guantánamo Bay had raised the issue of United States jurisdiction. In his previous report, he had made reference to the important ruling recognizing the principle of habeas corpus for all detainees. He had similarly referred to the situation of the five Cuban prisoners put on trial by a Miami court. He had stressed that they should be tried by a court with the prerequisites of independence and impartiality.

82. Lastly, the Universal Declaration of Human Rights, whose sixtieth anniversary was being commemorated, should be seen as a universal constitution to be implemented by all States in the context of the globalization of humanitarian issues.

83. **Mr. Saeed** (Sudan) said that his delegation was not satisfied with the Special Rapporteur's hasty and incomplete answers. The International Criminal Court was not a part of the United Nations structure. The Sudan had a competent judicial system, which was capable of addressing allegations of crimes committed in Darfur. The Special Rapporteur should not politicize his mandate by serving the interests of those parties that sought to destroy efforts towards peace in the Sudan. The report, and in particular the section concerning Darfur, was unacceptable to his delegation and Government: it politicized the issue and had nothing to do with the rule of law or with the mandate of the Special Rapporteur.

84. **Mr. Nsengimana** (Rwanda) said that one of the issues addressed by the Special Rapporteur, which was of considerable concern to the African continent, had apparently not received the fullest attention. The most recent African Summit in Sharm el-Sheikh had condemned the manner in which certain national judges, particularly in the West, had misused universal jurisdiction in respect of African leaders . He wished to know whether the problem arose from the character of the mandate or from lack of attention to the relationship between judicial independence and responsibility.

85. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers) said that he did not want to start an argument. In response to the statement by the representative of the Sudan, he said that the mandate of the Special Rapporteur had

originally had two aims. The first was to protect judges, lawyers, prosecutors and other court officers, who could be the target of violence or acts of intimidation. As the situation developed, the mandate had also come to cover the protection of the judiciary as an institution. But the aim of combating impunity had already been established; hence the Special Rapporteur reported every year on measures taken in that connection. Such reports addressed developments not only at the International Criminal Court, but also at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

86. In response to the question from the representative of Rwanda, he said that his mandate included the examination of cases where the judiciary was not adequately prosecuting the various forms of human rights violations, including racism and xenophobia.

87. **Mr. Saeed** (Sudan) said that the mandate of the Special Rapporteur had been defined by the Member States, and not by its holder. The mandate had been established in 1994, whereas the Rome Statute entered into force after that date. As the Special Rapporteur was no doubt aware, there was no relation between the International Criminal Court and the United Nations. The Special Rapporteur was therefore violating and politicizing his mandate.

The meeting rose at 1.10 p.m.